IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1388 of 2007

Banumathy .. Petitioner

Vs

1. The Govt. of Tamil Nadu,
   Rep. by its Secretary to Govt.,
   Home, Prohibition and Excise Dept.,
   Secretariat, Chennai-9.

2. The District Magistrate and
   District Collector, Vellore
   District, Vellore.

3.The Inspector General of Police,
Santhome, Chennai-4. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Srinivasa Babu

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

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(Made by P.D.DINAKARAN,J.)

The petitioner is the wife of the detenu by name Govindaraj, who was detained at Central Prison, Vellore, by an order dated 16.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in proceedings C3.D.O.No.53/2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

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2.The ground case which led to the passing of the detention order is that on 23.06.2007 at 9.00 hours, during the prohibition raid conducted by the Inspector of Police attached to Gudiyatham Taluk Police Station along with police party, at the foot of the hills of Dhommanpatti, the detenu was found indulging in distilling arrack and on seeing the police, when he tried to escape, he was encircled and arrested by the police. On his confession admitting the offence, a case in Crime No.241 of 2007 was registered on the file of Gudiyatham Taluk Police Station. The samples of arrack, as per the chemical analysis report, found admixed with 6.5 mgms.% w/v of atropine.

3.The second respondent, taking note of the above ground case and finding that the detenu came to the adverse notice of the authorities in three similar cases on the file of same police station, viz., in Crime Nos.203/2006, 917/2006 and 186/2007, having satisfied that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities, which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in considering the representation dated 28.7.2007 made on behalf of the detenu. Hence, we do not propose to go into other aspects of the case.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2.Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476* .

5.3.The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide *Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.*

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5.4.Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide *Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.*

5.5.It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide *Rajammal v. State of T.N., (1999) 1 SCC 417.*

6.1. Coming to the case on hand, admittedly, objecting to the order of detention dated 16.7.2007, a representation dated 28.7.2007 was made on behalf of the detenu, which was received by the Government on 1.8.2007. Remarks were called for from the detaining authority on the same day, who, in turn, called for parawar remarks only on 7.8.2007, there being a delay of four days excluding the intervening holidays. Even though the sponsoring authority received it on 13.8.2007, the remarks were sent to the detaining authority only on 20.8.2007, here also there is a delay of four days. Even though the file was circulated on 24.8.2007, it was considered by the Under Secretary, Additional Secretary and the Minister concerned only on 30.8.2007, on which date it was rejected. Here again, there is delay of four days. Even thereafter also, the rejection letter was prepared only on 6.9.2007 with a delay of five days, excluding two intervening holidays and thereafter, it was sent to the detenu on 7.9.2007 and served on 10.09.2007.

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6.2. From the above, it is crystal clear that at each stage, viz., while calling for parawar remarks by the detaining authority, the same sent by the sponsoring authority, the date on which the file was considered by the authorities and the date on which the rejection letter was prepared, there is considerable delay and there is no satisfactory explanation for the same.

7.At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194* is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8.That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.*

9. As already stated, there is delay in each stage while considering the representation of the detenu and there is no proper explanation for the same, which rendered the detention illegal and hence, the said point must succeed. Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The

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detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To:

1. The Secretary to Government
   of Tamil Nadu, Home, Prohibition and
   Excise Department, Fort St. George,
   Chennai 600 009.

2. The The District Magistrate and
   District Collector, Vellore
   District, Vellore.

3.The Inspector General of Police,
Santhome, Chennai-4.

4. The Superintendent
   Central Prison, Vellore.

5.The Joint Secretary to Govt.
Public (Law and Order) Department,
Fort St. George, Chennai-9.

6. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.V.Srinivasa Babu, Advocate Sr 71977

MA(CO)
km/4.1.

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